IN THE HIGH COURT OF JUDICATURE AT MADAS

DATED: 08.02.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

S.A.NOS.275 ,276, 403 to 406,414 to 416,429 to 431,488 to 493 678,679 of 2006
and
M.P.1 OF 2006, 3963,3964,5307 to 5310, 5508 to 5510, 5440 to 5442, 6193 to 6198 of 2006

S.Jeyaraj ..Appellant in S.A.NO.275/06
P.A. Doss ..Appellant in S.A.NO.276/06
Sambantham ..Appellant in S.A.NO.403/06
Mrs. Seethalakshmi ..Appellant in S.A.NO.404/06
Mrs. Maheswari ..Appellant in S.A.NO.405/06
Geralad ..Appellant in S.A.NO.406/06
S. Thomas ..Appellant in S.A.NO.414/06
K.C. George ..Appellant in S.A.NO.415/06
Mrs.Devanayagi ..Appellant in S.A.NO.416/06
Susai Regis ..Appellant in S.A.NO.429/06
Maria Joseph ..Appellant in S.A.NO.430/06
Mrs.Benedict ..Appellant in S.A.NO.431/06
Mrs.Arulappan ..Appellant in S.A.NO.488/06
Mrs.Amalraj ..Appellant in S.A.NO.489/06
Mrs.Thomas ..Appellant in S.A.NO.490/06
Mrs.Savarimuthu ..Appellant in S.A.NO.491/06
K.s. Anthony ..Appellant in S.A.NO.492/06
Mrs.Ignatius ..Appellant in S.A.NO.493/06
R. Manohar ..Appellant in S.A.NO.678/06
Fernando ..Appellant in S.A.NO.679/06

Vs.

Loyola College Society
rep. by its Procurator
Father Inchakkal
Loyola College Complex,
Choolaimedu, Chennai600 094.
..Respondent in all the Second appeals

This Second Appeal is filed against the judgment and decree passed by the Additional District Judge, Fast track-V, Chennai dated 29.7.2005 made in A.S.No.542, 543, 555, 590, 598, 601, 592, 595, 599, 556, 574, 591, 576, 572, 575, 573, 596, 600, 560 and 561 2004 in confirming the judgment and decree of the VIII Assistant Judge, City

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Civil Court, Chennai dated 25.8.2004 made in O.S.No.5653 of 2002, 6319, 5807, 5657/02, 952/03, 6315/02, 2123/03, 2125/03, 6318/02, 5656/02, 6316/02, 5658/02, 6320/02, 5655/02, 5663/02, 5660/02,5654/02, 5802/02, 5805/02 and 5804 of 2002 respectively.

For Appellant in
S.A.NOS.678 & 679/06:Mr.P.K.Rajagopal
For Appellant: Mr.Senthilnathan
in other S.As.
For Respondent: Mr.K.Venkatapathy
in all Senior Counsel
S.As for M/s M.B.Dominique

J U D G M E N T

This Judgment shall govern the above twenty second Appeals which have been arisen from a common Judgment rendered by the Additional District Judge, Fast Track Court -V, Chennai made in the following first appeals viz. A.S.No.542, 543, 555, 590, 598, 601, 592, 595, 599, 556, 574, 591, 576, 572, 573, 575, 596, 600, 560 and 561 of 2004 wherein the judgments of the VIII Assistant Judge, City Civil Judge, Chennai, granting a decree directing the defendants to deliver the possession of the suit properties to the plaintiff within three months in all the following suits 5653, 6319, 5807, 5657/02, 952/03, 6315/02, 2123/03, 2125/03, 6318/02, 5656/02, 6316/02, 5658/02, 6320/02, 5655/02, 5663/02, 5660/02,5654/02, 5802/02, 5805/02 and 5804 of 2002 were confirmed. Aggrieved over the said judgments, the defendants in those suits have brought forth these second appeals.

2. The respondents/plaintiffs described as Loyola College Society represented by its Procurator Father Inchakkal, sought the decrees for ejectment of the defendants in the respective suits alleging that the plaintiff is a Religious, Educational and Charitable Institution registered under the Tamil Nadu Societies Registration Act, 1975, that the properties described in the schedule belonged to the plaintiff, that the building and neighbouring building are all situated in Soosaiyapuram and those buildings are put up by the plaintiff six decades ago, and they were all leased out to the various tenants. The defendants had been in occupation of the building described in the schedule for the last several years and they have paid the rent at the rate mentioned in the respective plaints regularly. The tenancy was monthly as per the English Calender month. the plaintiff has decided to open anew vistas for keeping computers, telecommunication and audio vision age and also to construct several centers, besides a big hostel for which purpose, the entire property was required and the old buildings then existing were under the occupation of the tenants/defendants. Hence notice to quit was sent to the defendants terminating their tenancy and calling upon them to

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deliver the vacant possession of the suit property . Though they had acknowledged the receipt of the notice, they had not delivered the suit property . Hence the above said suits were filed.

3. In all the suits, the general denial of allegation was that it is true that the plaintiff was the landlord, but he was not the owner of the property. But the defendants as tenants are making the payment of rents. As the defendants are the statutory tenants, they are entitled to protection under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and the plaintiff ought to have initiated proceedings only under the Rent Control Act and apart from that, the suits are not maintainable, as they were not filed by a competent person.

4. The trial Court framed necessary issues and tried the suit and on trial, all the suits were decreed. Aggrieved defendants took it on first appeals referred to above, which were also dismissed by the first appellate forum. Not satisfied with the same, the defendants have brought forth these second appeals before this Court.

5. At the time of admission, the following substantial questions of law were formulated:

> 1.Whether the Courts below are correct in concluding that the plaintiff society is a charitable trust entitled to exemption from operation of the provisions of the Tamil Nadu Buildings(Lease and Rent Control) Act 1960 under G.O.Ms.No.2000 dated 16.8.1976 in the absence of any evidence or legal material what to substantiate such a conclusion?
>
> 2.Whether the first appellate Court erred in law in saying that the Societies Registration Act applies to Trust also without any evidence and pleadings?
>
> 3. Whether the Courts below erred in law in not conclusively deciding the legal status of the plaintiff and his locus standi which goes to the very root of the point relating to maintainability.

6. Advancing his arguments on behalf of the appellants, learned counsel would submit that the suit itself was not maintainable since the suit was filed by the Loyola College Society represented by its Procurator father Inchakkal . As could be seen from the cause title, it was filed only by Procurator, Loyola College Society which is a registered Society under the Tamil Nadu Societies Registration Act . EX.A. 61 is the bye-laws of the said Society in that regard . Clause 10 of the bye-laws clearly speaks that the name of the person, authorised to sue or to be sued on behalf of the Society is the

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Secretary of the Society and no one else and at the same time, under Clause 22, the funds of the Society shall be at the custody of the Procurator and in the instant case curiously, the suits were filed by the Procurator who was not competent even as per the bye-laws. Learned counsel would further add that at the time of cross examination of P.W.1 , a document was placed which has been marked before the Court as Ex.A62, a copy of the minutes of the meeting dated 8.11.2001 as it was the minutes of the governing Body meeting held on 8.11.2001 at 8.30 p.m. where Procurator Father Inchakkal was authoirsed to proceed legally to vacate the tenants in occupation of the buildings in Susaiyapuram by which he was empowered to initiate proceedings and accordingly initiated. Learned counsel for the appellant would further add that notices were served by the defendants on the plaintiff to produce three documents viz. sale deed in respect of the property in question, the minutes of the meeting by which the procurator was directed to take over all the properties of the Society from St.Joseph Inchakkal, which is the original owner of the property and the third document is the proceedings for handing over the property to the society. But in the instant case, the plaintiffs came forward to file Ex.A62 and it was produced by the plaintiffs as minutes of the meeting dated 8.11.2000. This document should not be accepted for more than one. Firstly it was a xerox copy and at the time of cross-examination only, it was marked with the objection and the said document has no relevancy to the present case, because it was not referred to in the original pleading and thus the document Ex.A.62, thoroughly has no relevancy and hence the trial Court has mainly relied upon Ex.A62 which was also affirmed by the first appellate forum and hence it has got to be rejected and if the Procurator was found to be incompetent to file the suits in question, automatically all the suits should have been dismissed. But both the Courts have taken an erroneous view that Procurator was competent to file a suit, but it was against the by-laws and was against the evidence of P.W.1 who was the only witness examined on the side of the plaintiff. The suits should have been dismissed on the above said ground. Mr.Senthil Nathan, learned counsel would submit that the Loyola College Society rep. by its procurator Father Inchakkal, the plaintiff before the Court below who is respondent herein was not examined at all. He took the Court to the relevant G.O.wehrein he stressed on the point that the properties are owned by the society. Here in the instant case, there is no evidence to show that the present properties in question were owned by the society . Under such circumstances, both the Courts were not correct in holding that the Society was also a trust. Therefore, taking the benefit of exemption, they can file suits and on that ground, the suit must be dismissed.

7. Contrary to the above contention, learned Senior Counsel appearing for the respondents society would submit that the trial Court was perfectly correct in passing a decree for ejectment in all the suits . The first appellate Court has also rightly affirmed the

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same. According to him, in the instant case, there was a sale deed marked as Ex.A63 by which the property has been purchased in the name of the Procurator and thus he is the custodian of the property and thus he is better than the Secretary. It is true that under the bye-laws the Secretary has to file a suit and apart from this, a person who is authorized can file a suit. In the instant case, the Procurator was authorised to file the suit. The Loyola College Society is registered under the Tamil Nadu Societies Registration Act. In the instant case, even before the filing of the suit, Procurator was also authorised to file a suit by a resolution dated 8.11.2001 which is marked as EX.A62 wherein he was authorised to institute proceedings and prosecute the same also and the same is also marked. After reading of the minutes of the proceedings , it is clear that it was properly and lawfully done and accepted by the evidence. So long as as the evidence of P.W.1,father Inchakkal would show that he was authorised by the committee of the society and as found under Ex.A62, he can file and maintain the suit and hence that contention has got to be rejected. As regards the other contention that they are not the owners of the property, it could not be countenanced for the simple reason that the property belonged to the society and the documents have been filed and apart from this, they were tenants in the past making payment of rent and they have addressed to the society for the purpose of doing repairs. Accordingly the plaintiff society alone are the owners and hence they are estopped from either questioning the title or the ownership of the society. Apart from that, in the instant case,they can well proceed before the civil forum as is governed by this Court in a decision reported in 2001 2LW 736 (Vijayakumar Vs.Roman Catholic Church represented by Rev.Father J.Anthony Josweph, Musiri) It was held by this Court that it can be relied on under the Societies Registration Act as the Procurator was the owner of the property and apart from this, the Society can maintain the suits since exemption has been granted under the said G.O. as already decided by this Court. Hence, all these appeals have got to be dismissed. Added further, the defendants have already filed a suit for injunction against the Procurator of the Society seeking for permanent injunction not to interfere with the possession except by due process of law. Having filed such suits, they are estopped from questioning the title or the ownership of the society . Hence for all these reasons, the appeals have got to be dismissed.

8. The Court paid its anxious consideration on the above submissions made by both sides.

9. This Court is of the considered opinion that all the appeals revolve around only on the question whether the suits are maintainable in view of the fact that the Procurator of the Loyola College Society instituted proceedings . Admittedly, the Loyola College Society is registered under the Tamil Nadu Societies Registration Act and the bye-laws have been filed under Ex.A61 which reads the name of the person authorised to sue or to be sued or

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behalf of the society. The Secretary of the Society shall be authorised to sue or to be sued on behalf of the society. Thus, it would be quite clear that the Secretary of the Society has got to be authorised. Further, when the suits were filed, the cause title was like this, Loyola College Society represented by this Procurator Father Inchakkal ,Loyola College Complex,Choolaimedu Chennai 600 094. Nowhere it is mentioned as Secretary of the Society.

10. In So far as Procurator was concerned, it is mentioned in Clause 22 which reads that the funds of the Society shall be at the custody of the Procurator and nowhere in the bye-laws, it is found that the Procurator can be acted as Secretary or he can be in the dual capacity as procurator and nowhere it is also found in the entire bye-laws that Procurator can be authorised to institute the suit. In the instant case, at the time of filing of the suits, the Procurator has filed the suits. It is an admitted position that at the time of cross-examination of P.W1, Ex.A62 document was marked . Ex.A62 is the xerox copy of the minutes of the proceedings of the meeting held on 8.11.2000 by the Committee and it is pertinent to point out that the first objection was raised by the appellant side that it should not have been marked, since it was inadmissible. But the respondents have got a very good answer which was brought to the notice of the Court that the original minutes of the meeting was produced before the Court . At this juncture it is to be pointed out that the contention that the same document would be relied on for the purpose of accepting the case of the respondent has to be discountenanced for the simple reason that no where in the bye-laws it is stated that a person should not be a Procurator and also in the position of Secretary. Now a reading of EX.A62 would indicate that father Inchakkal was shown as Secretary, but in the additional recital of the resolution, he was shown as Procurator and that he was also authorised to institute the proceedings. Had it been true,that Inchakkal was only the Secretary of the society at the time of institution of the proceedings before the Court, there was no impediment for the Plaintiff to describe him as Secretary of the Loyala College Society,but nowhere in the plaint, it is referred that he was a Procurator and also Secretary of the said Society or he was the Secretary who can institute a suit on behalf of the society and nowhere he is described as Secretary. In order to fill up the lacunae, a document has been produced before this Court. A reading of Ex.A62 would also clearly indicate that the said Inchakkal was described as Secretary and in his evidence he has mentioned that he was in a dual capacity. He would further say that when he filed the suits, he was in the capacity of the Secretary. So long as he was described as Secretary of the Society, at the time of filing of the suits, the document Ex. A62 was not marked. If both can be clubbed together, it would indicate that the document would have come into existence later as pointed out by the appellant. Thus, the minutes produced before the Court. Ex.A62 was the copy of the original. The Court is of the considered opinion that the document cannot cure the defect as already it has happened. Hence he is not competent to file a

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suit which is against the bye-law 10 under Ex.A61. Under such circumstances, this Court is of the considered opinion that a person who is incompetent has filed the suits and hence the suits could not be maintained, but both the Courts have taken an erroneous view . On that score, all the suits must have been dismissed. Hence, the judgments of both the Courts below are set aside. The appeals are allowed. The other contention is that the respondents are landlords and they are making rents all along as tenants and hence they are estopped from pointing or making evidence that they are the owners. In order to establish the receipt of rents, the Courts is of the considered view that they cannot be allowed to take advantage of the word 'owned' as found in G.O.2000 Home by the Tamil Nadu Government to state that the Society can be the owner but not continued to be the owner, but they are making payment of rent to the society and apart from this, as rightly pointed out by the respondent, they also filed suits for injunction not to interfere with the possession against the Procurator as the defendant and the same are pending. Under such circumstances, the second contention cannot be accepted. Hence, the suits are liable to be dismissed. In result, the above Second appeals are allowed. At the same time, liberty is given to the respondent to take appropriate proceedings as required, if so advised.No costs. Consequently, connected CMPs. are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Additional District Judge, Fast track Court-V, Chennai.

2.The VIII Assistant Judge, City Civil Court, Chennai .

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3. The Registrar, City Civil Court, Chennai

2 ccs to Mr.S. Senthilnathan, Advocate, sr. 8080, 8081

2 ccs to M/d. Dominique, Advocate, Sr. 7955, 7954, 7953, 7952, 7951, 7950, 7949, 7948, 7947, 7946, 7945, 7944, 7943, 7942, 7941, 7940, 7939, 7938, 7937, 7936,

2 ccs t Mr.P.K. rajagopal, Advocate, Sr,. 7911 ad 7912

S.A.NOS.275 ,276, 403 to 406,
414 to 416,429 to 431,
488 to 493 678,679 of 2006
and connected CMPs.

BV (CO)
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